

**DISTRICT OF COLUMBIA
DOH OFFICE OF ADJUDICATION AND HEARINGS**

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

GIBARA, INC.
Respondent

Case No.: I-00-20297

FINAL ORDER OF DISMISSAL

On March 13, 2002, the Government served a Notice of Infraction upon Respondent Gibara, Inc. alleging a violation of 22 DCMR 107.1, which permits the Department of Health to issue orders to owners or occupants of buildings requiring them to take specified measures to prevent rat infestation or to exterminate rats present at their property. The Notice of Infraction alleged that the violation occurred on March 11, 2002 at 3601 14th Street, N.W.

Respondent filed a timely answer with a plea of Deny, and I held a hearing on May 29, 2002. Nathaniel Hill, the inspector who issued the Notice of Infraction, appeared on behalf of the Government. Dr. Ricardo Galbis, an administrator for Respondent Gibara, Inc., appeared on its behalf.

Although there was testimony at the hearing that the Government had issued an order to Respondent in January 2002, there was no evidence of what the order required Respondent to do. The Government did not include a copy of the order with its pre-filed exhibits for the hearing, and it did not produce a copy of the order at the hearing. I left the record open until May 30, 2002, to permit the Government to file and serve a copy of the order. That deadline has passed,

and the Government has filed neither a copy of the order nor a motion for an extension of the filing deadline.

Proof of the issuance of an order and of its contents is essential in a § 107.1 case. The Government can not meet its burden of proving that a Respondent violated an order unless it can prove what the order required the Respondent to do. *DOH v. 1704 R Street Limited Partnership*, OAH No. I-00-20380 at 3 (April 17, 2002). Because there is no such proof in this case, Respondent can not be found liable. Moreover, because a copy of the order at issue is essential in every § 107.1 case, the Government is put on notice that the its pre-filed hearing exhibits in future cases alleging a violation of § 107.1 must include a copy of an order or the charge will be subject to dismissal for want of prosecution for the Government's failure to indicate the existence and availability of evidence through which it can meet its burden of proof and burden of going forward with the evidence under the Civil Infractions Act of 1985 and other applicable law. *See* D.C. Official Code § 2-1802.03(a); SCR Civil Rule 41(b).

Accordingly, it is, this _____ day of _____, 2002:

ORDERED, that Respondent is **NOT LIABLE** for violating an order issued pursuant to 22 DCMR 107.1, as alleged in the Notice of Infraction, and the Notice of Infraction is **DISMISSED WITH PREJUDICE**.

FILED **06/07/02**

John P. Dean
Administrative Judge